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October 4, 1956

Honorable Enoch D. Fuller
Secretary of State
Concord, New Hampshire

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CONCORD, N.H.

Dear Mr. Fuller:

You have inquired concerning the effect of inconsistency between the provisions of RSA 60:2-4 and section 6 of the same Chapter. Sections 2-4 provide for certain forms for absentee voting which shall contain a certification that the required conditions pertaining to an applicant absentee voter have been complied with, subject to penalties of perjury. Section 6 indicates the need for a jurat by an official in the presence of whom an absentee ballot has been executed.

Section 10 of the same Chapter provides that no absentee ballot shall be rejected for any omission or irregularity in its preparation or in the preparation or execution of any writing or affidavit required in the Chapter. It is entirely clear that a certification subject to penalties of perjury in this State is the equivalent to an affidavit to the same facts executed before an official entitled to receive oaths.

For this reason I respectfully advise that in my opinion any absentee ballot which contains the certification required by the provisions of section 2, is contained within an envelope conforming to the requirements of that section, has been issued after an application by the voter, or - in the case of a voter who is a member of the Armed Services, by another in his behalf, and sealed within a second envelope provided as set forth in section 2, IV, is a substantial compliance with Chapter 60 and entitles all such ballots to be received and counted.

Insofar as the word, affidavit, in any other sections of RSA 60 is concerned, it may be treated as the equivalent of and synonymous with the word, certificate, as that word appears in section 2, for it was the plain intention of the General Court, as appears in a review of the

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entire Chapter as well as the history of the legislation before committee, and in both the House and the Senate, to substitute the revised procedures on the forms and certificates as set forth in section 2 for the earlier, more cumbersome method appearing in section 6, although of course as the law now stands any absentee voter who so wishes may also vote in the manner specified in section 6. If he submits an absentee ballot conforming to the requirements of that section, sworn to before an official of the classification described, and enclosed in an envelope upon which appears the affidavit and jurat of said official, this alternative method remains available.

In accordance with your suggestion, this office has noted this redundancy in this Chapter and will recommend to the General Court at the next Session that it be corrected by appropriate amendment.

Sincerely,

Louis C. Wyman
Attorney General

W/d